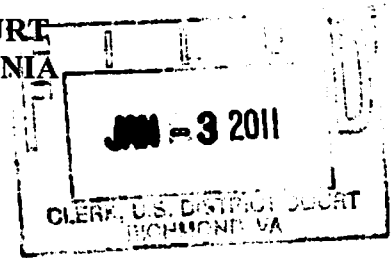


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



JOHN DANIEL O'NEILL,

Petitioner,

v.

Criminal Action No. **3:10CV157**

HARRIS L. DIGGS,

Respondent.

MEMORANDUM OPINION

John Daniel O'Neill has submitted a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his convictions in the Circuit Court for the City of Hampton (the "Circuit Court") for eight counts of rape, six counts of object sexual penetration, two counts of attempted rape, and one count of child pornography. The matter is before the Court on Respondent's motion to dismiss O'Neill's § 2254 petition on the grounds that O'Neill has failed to exhaust his available state court remedies as required. For the reasons set forth below the motion to dismiss will be DENIED AS MOOT.

Following his convictions, O'Neill unsuccessfully appealed his convictions to the Supreme Court of Virginia. In the spring of 2009, O'Neill filed a petition for a writ of habeas corpus with the Circuit Court. On August 21, 2009, the Circuit Court denied O'Neill's petition for a writ of habeas corpus. O'Neill appealed the dismissal of his state habeas petition to the Supreme Court of Virginia.

On March 30, 2010, this federal Court received O'Neill's § 2254 petition. On April 23, 2010, O'Neill moved the Court for a continuance while the Supreme Court of Virginia considered his appeal from the Circuit Court's dismissal of his state habeas petition.

On June 9, 2010, Respondent moved to dismiss O'Neill's § 2254 petition on the ground that O'Neill had not exhausted his state court remedies because O'Neill's appeal to the Supreme Court of Virginia remained pending as of that date. *See* 28 U.S.C. § 2254(b). On June 22, 2010, O'Neill filed two "Motions" opposing the dismissal of his § 2254 petition.

On November 19, 2010, O'Neill moved to withdraw his motion for a continuance. O'Neill represents that the Supreme Court of Virginia entered its decision on his appeal from the Circuit Court's denial of O'Neill's state habeas petition. Review of the Supreme Court of Virginia's docket reflects that the Supreme Court of Virginia refused O'Neill's petition for appeal on November 9, 2010.¹ Accordingly, Respondent's motion to dismiss the § 2254 petition on the grounds that O'Neill had failed to exhaust his state court remedies (Docket No. 16) will be DENIED. O'Neill's motion to withdraw his motion for a continuance (Docket No. 23) will be GRANTED. O'Neill's motion for a continuance (Docket No. 14) and motions in opposition to the motion to dismiss (Docket Nos. 20, 21) will be DENIED AS MOOT. Respondent will be DIRECTED to file a further response to O'Neill's § 2254 petition within thirty (30) days of the date of entry hereof.

An appropriate Order shall issue.

<p>/s/ James R. Spencer Chief United States District Judge</p>
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Date: 12-30-10
Richmond, Virginia

¹ Virginia's Judicial System, <http://www.courts.state.va.us/> (follow "Case Status and Information"; then click on "Supreme Court of Virginia" button; click on "Continue" button; enter case number 092218; then click on button "Search by Case Number").